A

KOPERASI TANJONG KERAMAT MALAYSIA BHD (FORMERLY KNOWN AS KOPERASI TANJUNG KERAMAT KOTA KINABALU BHD) v. PERMODALAN KELANTAN BHD & ANOR

B

HIGH COURT MALAYA, KUALA LUMPUR
YUSRIN FAIDZ YUSOFF JC
[SUIT NO: WA-22M-918-12-2022]
24 JULY 2025

C

Abstract – *The most important protection to a franchisee in a franchise agreement would be the express term as to the territory or area in which it is allowed to operate, as spelt out under s. 18(2)(a) of the Franchise Agreement 1998. A franchise agreement is not merely a private commercial arrangement between two contracting parties. Instead, it carries with it broader obligations that include the expectation of transparency, ethical business conduct, and equitable treatment of franchisees.*

D

E

CONTRACT: *Agreement – Franchise agreement – Agreement between franchisor and franchisee governed by standardised operational and technological framework – Franchisee granted territorial exclusivity – Subsequent grant of franchise to third party within exclusive territory of franchisee – Whether franchisor breached territorial exclusivity provision – Whether franchisor breached statutory prohibition against discriminatory practices – Whether franchisee entitled to terminate agreement – Whether termination valid and lawful – Franchise Act 1998, s. 20*

F

CONTRACT: *Termination – Validity – Franchise agreement governed by standardised operational and technological framework – Franchisee granted territorial exclusivity by franchisor – Subsequent grant of franchise to third party within exclusive territory of franchisee – Whether franchisor's failure to uphold territorial exclusivity amounted to fundamental breach of law and fact – Whether undermined franchisee's competitive advantage and vitiated core assurance of market protection – Whether franchisor breached statutory prohibition against discriminatory practices – Whether franchisor's failure to remedy breach pursuant to franchise agreement was 'good cause' for termination – Whether termination valid and lawful – Franchise Act 1998, ss. 20 & 31(2)(b)*

G

H

The first defendant was the registered proprietor and franchisor of the Ar-Rahn franchise business, which operates as a Shariah-compliant Islamic pawnbroking scheme, which was managed by the second defendant. The franchise was governed by a standardised operational and technological framework, including the mandatory use of the franchisor's proprietary IT system to facilitate the execution of Islamic pawnbroking transactions across all franchise outlets. Based on an Ar-Rahn franchise agreement dated

I

24 March 2014, the plaintiff was granted territorial exclusivity to operate under the Ar-Rahn brand within the designated 3km radius area of Wangsa Melawati, Kuala Lumpur at its premises at Dataran Wangsa Melawati. On 2 February 2021, Koperasi Sahabat Amanah Ikhtiar Malaysia Berhad ('Koperasi Sahabat') notified the plaintiff of its intention to open a new outlet at Wangsa Melawati, which fell squarely within the plaintiff's exclusive territory. The defendants, save for arranging discussions, took no action to prevent Koperasi Sahabat from commencing business operations. The plaintiff's letters demanding clarification and enforcement of exclusivity were ignored by the defendants. Hence, the present action against the defendants, wherein the plaintiff alleged that the defendants' inaction had led to its significant financial harm. The defendants, however, contended that they did not breach the exclusivity provision and had taken all necessary steps to address the issue once they became aware of it. The defendants also had, shortly after the filing of this suit, commenced a separate action against Koperasi Sahabat ('Suit 995'). The issues for the court's determination in the present case were: (i) whether the defendants breached the exclusive territory clause; (ii) whether the breach was fundamental; (iii) whether the plaintiff had validly terminated the said agreement; and (iv) whether the plaintiff was entitled to damages.

Held (allowing plaintiff's claim):

(1) The most important protection to a franchisee would be the express term as to the territory or area it is allowed to operate. Hence, the Franchise Act 1998 ('Act') provides the mandatory requirement to set out terms related to franchise territory. The relevant clause as to the subject of franchise territory in the Ar-Rahn franchise agreement was in cl. 4 which, amongst others, confers a territorial exclusivity. The defendants, having failed to take timely or effective action to prevent Koperasi Sahabat's entry into the plaintiff's exclusive territory, had thus breached the franchise agreement which guaranteed the plaintiff's exclusivity within its designated territory. (paras 30, 31 & 35)

(2) The defendant's breach, *ie*, the failure to uphold the plaintiff's territorial exclusivity, was fundamental in both law and fact. The exclusive right to operate within a defined territory was not merely an incidental term, but a cornerstone of the franchise arrangement upon which the plaintiff's investment and business operations were premised. The defendant's conduct in permitting Koperasi Sahabat to operate within the plaintiff's exclusive territory using the same proprietary IT infrastructure required under the agreement, struck at the heart of the plaintiff's commercial viability. This action undermined the plaintiff's competitive advantage and vitiated the core assurance of market protection which was central to any franchise relationship. The seriousness of the breach was further underscored by the proximity of the competing outlet. (paras 36-38)

(3) The defendants also breached the statutory prohibition against discriminatory practices under s. 20 of the Act. The provision prohibits a franchisor from unreasonably and materially discriminating between franchisees where such discrimination causes competitive harm. The decision to allow Koperasi Sahabat to open an additional outlet within the plaintiff's exclusive territory effectively placed the plaintiff in direct and immediate competition with a well-established and well-resourced franchisee. This materially undermined the plaintiff's competitive position, particularly given the close proximity between the two outlets. The plaintiff's termination of the agreement was wholly warranted given the breach which was serious in fact and fundamental in law. (paras 40, 41 & 43)

(4) The filing of Suit 995 by the defendants against Koperasi Sahabat was not a genuine or *bona fide* attempt to enforce the plaintiff's territorial exclusivity. The belated initiation of the suit appeared to be a reactive and superficial measure intended to create the appearance of remedial action rather than a sincere effort to uphold the plaintiff's rights. If the defendants had truly intended to stop the infringing conduct, they could have immediately disabled Koperasi Sahabat's access to the system, which the defendants had full control over. The lack of timely and meaningful enforcement supported the inference that Suit 995 was filed not to rectify the breach, but to shield the defendants from liability. (para 44)

(5) The plaintiff's termination of the franchise agreement was valid, lawful, and in full compliance with both contractual and statutory requirements. Clause 11.2 of the franchise agreement empowers the franchisee to terminate in the event of a breach by the franchisor, provided that written notice is given identifying the breach and that the franchisor fails to remedy the breach within 14 business days. This mechanism aligns with s. 31(2)(b) of the Act, which recognises such failure as 'good cause' for termination. The plaintiffs letter constituted a clear and unequivocal notice of termination. The termination was not conditional upon an immediate cessation of all commercial operations, particularly where such cessation would have prejudiced existing customers and jeopardised compliance with regulatory or fiduciary obligations. Crucially, there was no evidence that the plaintiff continued to engage in new Ar-Rahnu transactions using the defendants' brand, logo, or proprietary products post-termination. The residual activities post-termination was undertaken to mitigate risk and ensure orderly disengagement. Such actions did not amount to a waiver of the plaintiff's termination rights nor did they revive the contractual relationship. (paras 45, 46, 48 & 49)

(6) Upon the defendant's breach of contract, the plaintiff was entitled to compensation under s. 74 of the Contracts Act 1950. The statutory right to compensation flowed directly from the breach and served to place the plaintiff, as far as money could do so, in the position they would have been in had the contract been duly performed. The damages must, however, be confined to those which naturally arise in the ordinary course of events or were within the contemplation of both parties at the time the contract was made, and not for any remote or indirect losses. On the issue of aggravated damages, there was no evidence of malicious, high-handed, or oppressive conduct on the part of the defendants that would warrant such an award. Also, in the absence of evidence of oppressive, arbitrary, or unconstitutional conduct by a government official or where the defendants' actions were calculated to generate a profit that would likely exceed any compensation payable to the plaintiff, the claim for exemplary damages was disallowed. (paras 52-54 & 56)

Case(s) referred to:
Chong Siew Chiang v. Chua Chin Geh & Anor [1995] 1 CLJ 173 HC ***(refd)***
Gerbang Alaf Restaurants Sdn Bhd v. Chai Su Lin & Anor [2023] 8 CLJ 337 CA ***(foll)***
Lembaga Kemajuan Tanah Persekutuan (Felda) & Anor v. Awang Soh Mamat & Ors [2009] 5 CLJ 1 CA ***(refd)***
Noraimi Alias v. Rangkaian Hotel Seri Malaysia [2009] 9 CLJ 815 HC ***(refd)***
Rookes v. Barnard [1964] 1 All ER 367 ***(foll)***
Soo Kian Huat v. Zenith Aim Sdn Bhd [2016] CLJU 977; [2016] 1 LNS 977 HC ***(refd)***

Legislation referred to:
Central Bank of Malaysia Act 2009, s. 52
Contracts Act 1950, s. 74
Evidence Act 1950, s. 57(2)
Franchise Act 1998, ss. 18(2)(b), 20, 31(2)(b), (3)(b)

For the plaintiff - Lee Wing Hong; M/s Marcus Tan & Co
For the defendants - Mohammad Hazim Mohd Yaacob; M/s Azmi & Assocs

Reported by S Barathi

JUDGMENT

Yusrin Faidz Yusoff JC:

Introduction

[1] This judgment addresses the claims made by the plaintiff against the defendants regarding alleged breaches of an Ar-Rahn franchise agreement, specifically focusing on the defendants' failure to uphold the exclusivity provisions concerning the operation of an Islamic pawn broking franchise within a specified territory. The plaintiff, who operates a franchise under the defendants' brand and IT system, alleges that the defendants' inaction has led

A to significant financial harm. The defendants, however, contend that they did not breach the exclusivity provision and that they took all necessary steps to address the issue once they became aware of it. It is now the role of this court to determine the merits of these competing claims and to adjudicate accordingly.

B **Background Facts**

[2] The material facts of this case are largely uncontested, with the trial lasting only a single day and featuring testimony from one witness on behalf of the plaintiff and one for the defendants. The material facts, distilled from pleadings, witness testimony, and documentary evidence are uncontroverted.

C

[3] The first defendant is the registered proprietor and franchisor of the Ar-Rahn franchise business, which operates as a Shariah-compliant Islamic pawnbroking scheme which is managed by the second defendant. The franchise is governed by a standardised operational and technological framework, including the mandatory use of the franchisor's proprietary IT system to facilitate the execution of Islamic pawnbroking transactions across all franchise outlets.

D

[4] Based on the Ar-Rahn franchise agreement dated 24 March 2014 ("franchise agreement"), the plaintiff was granted territorial exclusivity to operate under the Ar-Rahn brand within the designated 3km radius area of Wangsa Melawati, Kuala Lumpur at its premises known as No. 39, Jalan Dataran Wangsa 1, Dataran Wangsa Melawati, Wangsa Melawati, 53300 Kuala Lumpur.

E

[5] On 2 February 2021, Koperasi Sahabat Amanah Ikhtiar Malaysia Berhad ("Koperasi Sahabat") notified the plaintiff of its intention to open a new outlet at No. 56, Lorong Dataran Wangsa, Wangsa Melawati, 53300 Kuala Lumpur which is an address that falls squarely within the plaintiff's exclusive territory (See: Bundle B, at pp. 159 to 160).

F

[6] The defendants admitted awareness of this letter during cross-examination (See: notes of proceedings at pp. 50 to 51). Save for arranging discussions, they took no action to prevent Koperasi Sahabat from commencing business operations in December 2021.

G

[7] The plaintiff sent letters dated 12 January 2022 and 3 March 2022 demanding clarification and enforcement of exclusivity (See bundle B, pp. 172 to 177). The defendants ignored these.

H

[8] After the defendants failed to respond to plaintiff's solicitor's notice dated 25 April 2022, the plaintiff terminated the franchise agreement on 3 October 2022 (See bundle B at p. 189).

I

[9] The plaintiff initiated the present action against the defendants on 12 December 2022. Shortly thereafter, on 21 December 2022, the defendants commenced a separate action against Koperasi Sahabat *via* Suit No. WA-B52NCC-995-12-2022 ("Suit 995") (See bundle B, pp. 191 to 216). In Suit 995, the defendants alleged that Koperasi Sahabat, who was already operating 23 branches under the defendants' Ar-Rahn brand, had unilaterally established two additional franchise branches without obtaining the defendants' prior consent. These newly established branches are situated in Wangsa Melawati, Kuala Lumpur, and Bachok, Kelantan.

[10] On 26 March 2023, the defendants, by way of encl. 11, applied to join Koperasi Sahabat as a co-defendant in this suit. However, on 20 June 2023, I dismissed the application on the basis that no contractual relationship existed between the plaintiff and Koperasi Sahabat. In my view, the proper and procedurally sound course would have been for the defendants to bring Koperasi Sahabat into the proceedings by way of a third-party action, rather than seeking to compel the plaintiff to name it as a co-defendant. Notwithstanding this, the defendants ultimately chose not to pursue third-party proceedings against Koperasi Sahabat.

[11] On 28 February 2025, following the conclusion of the full trial and upon due consideration of the parties' written and oral submissions, I granted the plaintiff's prayer for a declaration that the franchise agreement stood validly terminated as of 3 October 2022. I further ordered that general damages be assessed, with interest at the rate of 5% per annum on the sum assessed, together with costs in the sum of RM25,000. In light of the facts and circumstances, I refused to award aggravated or exemplary damages.

[12] Essentially, the defendants *vide* notice of appeal dated 27 March 2025 is appealing against my aforesaid decision.

Issues

[13] The court framed the following issues:

(i) whether the defendants breached the exclusive territory clause;

(ii) whether the breach was fundamental;

(iii) whether the plaintiff validly terminated the said agreement; and

(iv) whether the plaintiff is entitled to damages.

Counsels' Contentions

Plaintiff's Contentions

[14] Learned counsel for the plaintiff, Lee Wing Hong argues that the defendants' inaction, despite their knowledge of Koperasi Sahabat's operations within the plaintiff's exclusive territory, constituted implied approval and a direct breach of cl. 4.3 of the franchise agreement.

[15] Counsel argues that this clause explicitly grants the plaintiff exclusive rights to operate within a specified area, and any violation of this provision is a fundamental breach of the agreement. It is further contended that the defendants' failure to remedy the breach within the 14-day notice period stipulated in cl. 11.2 of the franchise agreement, and as mandated by s. 31(2)(b) of the Franchise Act 1998 ("Franchise Act"), entitled the plaintiff to lawfully terminate the agreement.

[16] Learned counsel for the plaintiff further submits that the plaintiff's business suffered significantly due to the competition from Koperasi Sahabat's unauthorised operation, leading to financial losses and reputational harm. Hence, it is argued that the plaintiff's termination of the agreement and claim for damages are justified.

Defendant' Contentions

[17] Learned counsel for the defendants, Mohammad Hazim bin Mohd Yaacob, vigorously contests the plaintiff's assertions, advancing a tripartite defence grounded in contractual interpretation, equitable principles, and evidentiary analysis. Firstly, counsel underscores the absence of any formal or documented approval granted to Koperasi Sahabat for its Wangsa Melawati outlet, characterising the defendants' conduct as consistently oppositional rather than permissive.

[18] The defendants' counsel contends that the defendants undertook objectively "reasonable steps" within their operational capacity to address the incursion, including initiating substantive dialogue with both Koperasi Sahabat and the plaintiff to explore amicable resolutions, conducting internal reviews of territorial compliance, and ultimately instituting legal proceedings (Suit 995) seeking injunctive relief and damages for breach of the master franchise agreement. The temporal gap between Koperasi Sahabat's operational commencement and the lawsuit is framed not as inertia, but as a period dedicated to exhausting non-litigious remedies in line with commercial practicality and the preservation of franchisee relationships.

[19] Secondly, the defendants' counsel posits that the plaintiff demonstrably failed in its equitable duty to mitigate losses through unreasonable delay. Emphasis is placed on the plaintiff's receipt of Koperasi Sahabat's formal notification of intent (February 2021) and its own photographic evidence of ongoing renovations (April 2021), yet its failure to lodge a formal, documented protest with the defendants until January 2022, nearly a year later. This protracted silence, it is argued, constitutes a critical failure to act promptly when early intervention could have potentially curtailed Koperasi Sahabat's establishment or compelled swifter enforcement action by the defendants, thereby minimising the alleged competitive harm and operational losses now claimed. The plaintiff's inaction during this pivotal window fundamentally undermines the quantum and even the attribution of damages sought.

[20] Thirdly, learned counsel for the defendants challenges the legal validity of the plaintiff's purported termination of the franchise agreement *vide* letter dated 3 October 2022. This challenge rests on the demonstrable continuation of the plaintiff's operational activities under the agreement's framework beyond the termination date and right up until its natural expiry in March/April 2024. Counsel highlights testimony confirming the plaintiff continued submitting mandatory monthly reports, remitting royalty payments, and utilising the defendants' proprietary IT systems well into 2023. Furthermore, while new transactions purportedly ceased, the outlet remained physically open for customer redemptions, maintaining a commercial presence. This course of conduct, counsel asserts, is fundamentally inconsistent with treating the franchise agreement as lawfully terminated in October 2022. It demonstrates the plaintiff's own understanding that the contractual relationship remained extant, thereby negating the effectiveness of its earlier termination notice and rendering its claims premised on wrongful termination legally unsustainable.

Court's Findings

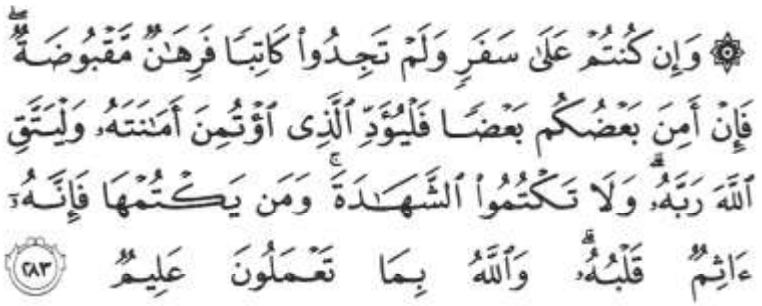
Issue 1: Whether The Defendants Breached The Exclusive Territory Clause

[21] Pawnbroking as a financial mechanism has long been shaped by religious ethics, particularly in Abrahamic traditions. Under Mosaic Law, the practice of lending money on interest was stringently restricted. Jews were expressly forbidden from charging interest on loans extended to fellow Jews, although they could charge interest to non-Jews. Until the Reformation, Christians were also forbidden to lend to each other for interest. Under Islamic law, a form of pawnbroking known as *Ar-Rahn* or *Ar-Rahnu*, which operates without the element of interest, offers a Shariah-compliant framework that aligns with the prohibition of riba while enabling access to secured short-term financing.

[22] In Malaysia, *Ar-Rahn* or *Ar-Rahnu* system operates under the Pawnbrokers Act 1972 and is governed by the principles of *Qardhul Hassan* (interest free facility) and *Wadiah Yad-Dhamanah* (custody with a guarantee) both of which are essentially free from interest (riba). Unlike conventional pawnbroking, customers are required to pay a safekeeping fee, and pre-agreed profit which is significantly lower than the interest typically imposed by traditional lenders. Furthermore, pledged items will not be auctioned without the express consent of the owner.

[23] The contract of *rahn* is permissible based on the following verse of Quran:

A



B

C

If you are on a journey (and then you wish to have a contract of debt with one another), but you cannot find a scribe (to write down the document), then let a pledge be taken in hand (by the one who provides

D

the debt). But if any of you entrusts one another with a pledge (without a document of contract, witnesses or the pledged goods as security), let the one who is trusted fulfils his trust; and let him be mindful of Allah, his Lord. And let him (who stand as witnesses) to not conceal testimony, for whoever hides it is sinful at heart. And (remember) that Allah has full knowledge of all that you do

E

– Surah al-Baqarah, verse 283 (Tafseer Ar-Rahman interpretation of the meaning of the Qur'an).

[24] The following hadith implies the general permissibility of *Ar-Rahn*:

F

عَنْ عَائِشَةَ رَضِيَ اللَّهُ عَنْهَا أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اشْتَرَى طَعَامًا مِنْ يَهُودِيٍّ إِلَى أَجَلٍ وَرَهَنَهُ دِرْعًا مِنْ حَدِيدٍ.

G

Aishah RA narrated that the Prophet (peace be upon him) bought some food from a Jew on deferred payment, and he (peace be upon him) pledged his steel armour as security for it.

– Al-Bukhari, Sahih al-Bukhari, Dar Tawwaq al-Najah, Lebanon, j.3, h. 56, hadith no. 2068.

H

[25] As a Shariah-compliant financial solution, *Rahn* is regarded as a just and ethical alternative that promotes social and economic equity, ensures fair distribution of income and wealth, and contributes meaningfully to poverty alleviation.

I

[26] While not binding on the defendants, this court is entitled to have due regard to the rulings of the Shariah Advisory Council ("SAC") of Bank Negara Malaysia as a source of persuasive authority, particularly in matters

concerning Islamic finance and the structure of *Ar-Rahnu* products. Section 52 of the Central Bank of Malaysia Act 2009 expressly recognises the SAC as the authoritative body for the ascertainment of Islamic law in matters relating to Islamic financial business. In this context, the SAC, at its 140th meeting on 28 October 2013 and its 166th meeting on 23 February 2016, ruled that the combination of multiple contracts that are interdependent or conditional upon one another is permissible under Shariah principles, provided that the arrangement does not:

(i) lead to the element of interest, uncertainty (*gharar*) and gambling (*maysir*);

(ii) result in any contradiction between the objectives of each contract (*muqtada 'aqd*); and

(iii) lead to any element prohibited by Shariah.

[27] The SAC in its 198th and 199th meetings on 29 October 2019 and 26 November 2019 has made a ruling that the structuring of Ar-Rahnu product based on *tawarruq* and *rahn* is permissible subject to the following conditions:

(i) for *Ar-Rahnu* product involving the purchase of commodity in bulk at the beginning of the business day, the *fiqh* adaptation (*takyif fiqhi*) must be clear in relation to the cancellation of the commodity purchased from the commodity trading platform provider at the end of the business day;

(ii) in the event of default, the customer's consent shall be obtained prior to the liquidation of the collateral;

(iii) the terms and conditions of the *Ar-Rahnu* product shall clearly specify the following treatment in cases where a default by the customer leads to the liquidation of the underlying collateral:

(a) where the proceeds from the liquidation of the underlying collateral exceed the liability of the customer, the excess amount shall be returned to the customer; and

(b) where the proceeds from the liquidation of the collateral are insufficient to meet the liability of the customer, the Islamic financial institution (IFI) has the right to claim the balance from the customer;

(iv) the customer shall be informed on the specification and features of the transacted commodity including its location, type, quality and quantity as well as the calculation mechanism to avoid the element of uncertainty (*gharar*) and any dispute by the contracting parties; and

(v) all requirements set out in Bank Negara Malaysia's (the bank) policy documents on *tawarruq* and *rahn* shall be complied with.

[28] This ruling is read together with the SAC ruling on the execution of *tawarruq* arrangement *via* straight-through processing ("STP") dated 26 November 2019. The STP, in this context, refers to the use of technology to automate the process of executing Ar-Rahn transactions, from application to disbursement and redemption, without manual intervention. This can involve using electronic systems to manage collateral, calculate fees, and facilitate payments.

[29] The operations of a franchise, on the other hand, are generally governed by the Franchise Act 1998. In *Noraimi Alias v. Rangkaian Hotel Seri Malaysia* [2009] 9 CLJ 815; [2009] 9 MLJ 475, Mary Lim JC (as Her Ladyship then was) underscored that a franchise agreement is not merely a private commercial arrangement between two contracting parties. Instead, it carries with it broader obligations that include the expectation of transparency, ethical business conduct, and equitable treatment of franchisees. The judgment reflects the legislative intent behind the Franchise Act which is to ensure that the franchising model upholds not just contractual fairness, but also the integrity and sustainability of franchised businesses in Malaysia.

[30] The most important protection to a franchisee would be the express term as to the territory or area in which it is allowed to operate. Recognising this essential element, the Franchise Act contains the mandatory requirement to set out terms related to franchise territory. In particular, s. 18(2)(b) states as follows:

> Requirements of franchise agreement
>
> 18(1) A franchise agreement shall be in writing.
>
> (2) **A franchise agreement shall contain** but is not limited to –
>
> (b) the territorial rights granted to the franchisee. (emphasis added)

[31] Based on the Ar-Rahn franchise agreement dated 24 March 2014, the relevant clause as to the subject of franchise territory can be found in cl. 4 which stipulates as follows:

> 4. FRANCHISE PREMISE & FRANCHISE TERRITORY
>
> 4.1 The rights granted to the Franchisee under this Agreement shall extend only to carrying on or operating the Business at or from the Premises within the Franchise Territory.
>
> 4.2 For the purpose of this Agreement, the Franchise Territory shall be as follows:
>
> (a) Any state capital – in a radius of one (1) kilometer; or
>
> (b) All other territories – in a radius of three (3) kilometer.
>
> From Franchisor outlets and/or other Franchisee outlets as may be operated by the Franchisee.

4.3There shall be only one (1) outlet, which is allowed to operate within the radius as described in Clause 4.2 and the Franchisor's Ar-Rahn outlets shall not be allowed to operate within the Franchise Territory.

4.4 If case where there are two or more non-state capital or districts located within a 3 kilometer radius, the conditions as specified in Clause 4.2(b) above shall apply and there shall be only one (1) outlet which is allowed to be operated within such area.

[32] Although the parties have agreed that cl. 4.2(b) of the franchise agreement applies, conferring a territorial exclusivity of a 3km radius, it is notable that the franchise in question is located in Kuala Lumpur. Clause 4.2(a) provides a more limited territorial protection of 1km for franchises situated in any "state capital," while cl. 4.2(b) affords a broader 3km protection for "all other territories". This distinction invites scrutiny: why should Kuala Lumpur, a federal territory and Malaysia's most populous and commercially dense city, fall under the more expansive radius rather than the more restrictive one applicable to state capitals?

[33] One possible explanation is that the clause was drafted with state capitals in mind, and Kuala Lumpur, as a federal territory, may not have been expressly contemplated within the definition of a "state capital". Nonetheless, this interpretation risks producing results that contradict commercial logic. Given Kuala Lumpur's urban density, economic centrality, and closely packed retail zones, granting a single franchisee a 3km radius could effectively eliminate opportunities for others to operate within large swathes of the city. In contrast, many state capitals are less dense, and yet subject to a tighter 1km exclusivity. A purposive reading of the clause might therefore suggest that a narrower radius is more appropriate for highly urbanised areas like Kuala Lumpur, in order to preserve competition, market diversity, and consumer access.

[34] Be that as it may, it is ultimately the intention of the parties as expressed in the agreement that must prevail. If the parties had mutually agreed to apply cl. 4.2(b) despite the franchise being located in Kuala Lumpur, then the court is bound to give effect to that intention.

[35] Upon examining the evidence adduced at trial, the court finds that the defendants breached the franchise agreement, particularly in relation to cl. 4.3, which guarantees the plaintiffs exclusivity within its designated territory. The evidence shows that Koperasi Sahabat had notified the plaintiff of its intention to operate an outlet in Wangsa Melawati *via* a letter dated 2 February 2021. This fact was not disputed. Under cross-examination, SD1 admitted that the defendants were aware of this letter, as reflected in the notes of proceedings at pp. 50 to 51. Despite this knowledge, the defendants failed to take timely or effective action to prevent Koperasi Sahabat's entry into the plaintiff's exclusive territory.

A *Issue 2: Whether The Breach Was Fundamental*

[36] The court is of the view that the breach committed by the defendants, namely the failure to uphold the plaintiff's territorial exclusivity, was fundamental in both law and fact. Clause 4.3 of the franchise agreement conferred upon the plaintiff an exclusive right to operate within a defined
B territory. This exclusivity is not merely an incidental term, but a cornerstone of the franchise arrangement upon which the plaintiff's investment and business operations were premised.

[37] The defendants' conduct in permitting Koperasi Sahabat, an
C established franchisee with 23 outlets, to operate within the plaintiff's exclusive territory using the same proprietary IT infrastructure required under the agreement, struck at the heart of the plaintiff's commercial viability. The defendants' actions undermined the plaintiff's competitive advantage and vitiated the core assurance of market protection which is central to any franchise relationship.

D

[38] The seriousness of the breach is further underscored by the proximity of the competing outlet. The court has carefully considered the evidence relating to the proximity between the plaintiff's outlet and the proposed outlet of Koperasi Sahabat based on s. 57(2) of the Evidence Act 1950. At
E p. 219 of bundle B, a Google Maps distance measurement was tendered by the plaintiff, indicating that the plaintiff's premises are 2.1km away from the proposed outlet. However, the court finds this reference to be inaccurate, as it is based on an incorrect address namely Lot 44341, Jalan 20C, Off Jalan Badam 1, Kampung Cheras Baru, 56100 Kuala Lumpur, which does not reflect the actual location of the plaintiff's outlet.

F

[39] Using the same Google Maps application, the court finds that the actual distance between the two outlets is substantially shorter. It is proper for the court to take judicial notice of established facts such as the location of properties and the distances between them, particularly where such
G information is readily available and objectively verifiable. Upon analysing Google Maps, the court is satisfied that Koperasi Sahabat's outlet is located in a row of shophouses directly behind the plaintiff's existing outlet. When measured in a straight line from door to door from No. 39, Jalan Dataran Wangsa 1, Dataran Wangsa Melawati, Wangsa Melawati, 53300 Kuala Lumpur to No. 56, Lorong Dataran Wangsa, Wangsa Melawati, 53300
H Kuala Lumpur, the direct distance is less than 60 metres. This close physical proximity strongly supports the plaintiff's assertion that the defendants failed to uphold the territorial exclusivity granted under the franchise agreement.

[40] Further, the court is of the considered view that the defendants'
I conduct breached the statutory prohibition against discriminatory practices under s. 20 of the Franchise Act which states as follows:

Prohibition against discrimination

20**. It shall be an unfair franchise and an offence under this Act for any franchisor to unreasonably and materially discriminate between franchisees operating a franchise** in the charges offered or made for franchise fees, royalties, goods, services, equipment, rentals or advertising services **if such discrimination will cause competitive harm to a franchisee who competes with a franchisee who receives the benefit of the discrimination,** unless and to the extent that any classification of or discrimination between franchisees is –

(a) based on franchises granted at different times, and such discrimination is reasonably related to the differences in time;

(b) related to one or more programmes for making franchises available to persons with insufficient capital, training, business experience or education, or lacking other qualifications;

(c) related to efforts by the Government or any of its agencies to promote variation in products or service lines or business formats or designs;

(d) related to efforts by one or more franchisees to cure deficiencies in the operation of franchised businesses or defaults in franchise agreements; or

(e) based on other reasonable distinctions considering the purposes of this Act and is not arbitrary. (emphasis added)

[41] This provision prohibits a franchisor from unreasonably and materially discriminating between franchisees where such discrimination causes competitive harm. In the present case, it is undisputed that Koperasi Sahabat is an existing franchisee operating 23 outlets under the defendants' Ar-rahn brand. The decision to allow Koperasi Sahabat to open an additional outlet within the plaintiff's exclusive territory, and to do so using the defendants' proprietary IT infrastructure, which is integral to the operation of the Shariah-compliant franchise model, effectively placed the plaintiff in direct and immediate competition with a well-established and well-resourced franchisee. This decision materially undermined the plaintiff's competitive position, particularly given the close proximity between the two outlets.

[42] The defendants' preferential treatment of Koperasi Sahabat, in the face of a binding exclusivity clause in the plaintiff's favour, cannot be justified under any of the exceptions listed in s. 20. There is no evidence that the discrimination was based on differences in time of franchise grant, any government initiative, or a remedial programme. Nor is there any indication that the plaintiff was deficient in the operation of its franchise. Instead, the conduct of the defendants appears arbitrary, favouring the commercial interests of a larger franchisee at the expense of a smaller one, despite the plaintiff's full compliance with its obligations under the agreement.

[43] This unreasonable and material discrimination not only caused competitive harm to the plaintiff, but also vitiated the fundamental assurance upon which the plaintiff's franchise investment was made, namely, territorial exclusivity. In such circumstances, the breach is not only serious in fact, but fundamental in law, and the plaintiff's termination of the agreement is wholly warranted.

[44] The court is not persuaded that the filing of Suit 995 by the defendants against Koperasi Sahabat constitutes a genuine or *bona fide* attempt to enforce the plaintiff's territorial exclusivity. On the contrary, the belated initiation of the suit appears to be a reactive and superficial measure intended to create the appearance of remedial action rather than a sincere effort to uphold the plaintiff's rights. Notably, the defendants had full control over the proprietary IT system that governed the operations of all franchisees. If the defendants had truly intended to stop the infringing conduct, they could have immediately disabled Koperasi Sahabat's access to the system. Their failure to do so, while allowing the infringing activity to continue under their watch, is telling. It defies logic for the defendants to claim opposition to the breach while actively facilitating it through their own infrastructure. The lack of timely and meaningful enforcement supports the inference that Suit 995 was filed not to rectify the breach, but to shield the defendants from liability. In substance, the court finds that Suit 995 is a whitewash, devoid of genuine urgency or intent, and incapable of curing or excusing the defendants' fundamental breach of the franchise agreement.

Issue 3: Whether The Plaintiff Validly Terminated The Franchise Agreement

[45] The court concludes that the plaintiff's termination of the franchise agreement was valid, lawful, and in full compliance with both contractual and statutory requirements. Clause 11.2 of the franchise agreement empowers the franchisee to terminate in the event of a breach by the franchisor, provided that written notice is given identifying the breach and that the franchisor fails to remedy the breach within 14 business days. This mechanism aligns with s. 31(2)(b) of the Franchise Act, which recognises such failure as "good cause" for termination. Section 31 is reproduced below:

> **Termination of franchise agreement**
>
> 31. (1) *No franchisor or franchisee shall terminate a franchise agreement before the expiration date except for good cause as provided in subsections (2) and (3).*
>
> (2) *"Good cause" shall include,* but is not limited to –
>
> (a) the failure of a franchisor or a franchisee to comply with any terms of the franchise agreement or any other relevant agreement entered into between the franchisor and franchisee; and

(b) the failure of a franchisor or the franchisee to remedy the breach committed by him or any of his employees within the period stated in a written notice given by the franchisor, which shall not be less than fourteen days, for the breach to be remedied.

(3) *"Good cause" shall include, but without the requirement of notice and an opportunity to remedy the breach, circumstances in which the franchisor or franchisee* –

(a) makes an assignment of the franchise rights for the benefit of creditors or a similar disposition of the assets of the franchise to any other person;

(aa) becomes bankrupt or insolvent;

(b) voluntarily abandons the franchised business;

(c) is convicted of a criminal offence which substantially impairs the goodwill associated with the franchisor's mark or other intellectual property; or

(d) repeatedly fails to comply with the terms of the franchise agreement.

(emphasis added)

[46] While the defendants assert that the plaintiff's continued operational activities are inconsistent with a lawful termination of the franchise agreement, such a conclusion overlooks the commercial and legal context in which those actions were undertaken. The plaintiff's letter dated 3 October 2022 constitutes a clear and unequivocal notice of termination, premised on the defendants' fundamental breach of the territorial exclusivity clause. This act of termination was not conditional upon an immediate cessation of all commercial operations, particularly where such cessation would have prejudiced existing customers and jeopardised compliance with regulatory or fiduciary obligations.

[47] The continued submission of monthly reports and royalty payments post-termination must be understood as part of a transitional or wind-down process, undertaken in good faith to avoid disruption to customers and potential regulatory repercussions. The use of the defendants' IT system was similarly unavoidable, given that the entire redemption infrastructure, designed and controlled exclusively by the defendants, remained the only operational means by which the plaintiff could manage existing customer pawns and redemptions. This technological dependency, which was imposed by the franchisor, meant the plaintiff had little alternative but to maintain partial access until a suitable cut-off could be effected without harming customers or violating legal obligations.

[48] Moreover, the physical presence of the outlet for customer redemptions does not amount to a continuation of the franchise business. It represents responsible stewardship over outstanding pawn obligations, not a continuation of new business under the defendants' brand. Crucially, there

is no evidence that the plaintiff continued to engage in new *Ar-Rahnu* transactions using the defendants' brand, logo, or proprietary products post-termination. In fact, the data shows that new transactions ceased altogether from October 2022 onwards.

[49] In sum, while certain residual activities continued post-termination, these were undertaken to mitigate risk and ensure orderly disengagement. Such actions do not amount to a waiver of the plaintiff's termination rights nor do they revive the contractual relationship. Be that as it may, the determining factor remains the plaintiff's intention, which was clearly and consistently manifested in the termination letter and subsequent conduct that affirmed the cessation of the franchise relationship.

[50] To further address the defendants' contention that the plaintiff's post-termination conduct amounts to a waiver or affirmation of the franchise agreement, reliance is placed on the decision of the Court of Appeal in *Gerbang Alaf Restaurants Sdn Bhd v. Chai Su Lin & Anor* [2023] 8 CLJ 337; [2023] 5 MLJ 491. In that case, Hashim Hamzah JCA affirmed that s. 31(3)(d) of the Franchise Act permits a franchisor or franchisee to terminate a franchise agreement without the need for prior notice or an opportunity to remedy where there has been repeated non-compliance with the terms of the agreement.

[51] Even assuming, *arguendo*, that some of the plaintiff's actions post-termination could be construed as inconsistent with immediate cessation, such conduct does not extinguish or negate the legal effect of the termination if it was triggered by repeated breaches by the defendants. The plaintiff's right to terminate would also be available under s. 31(3)(d) which stands independently of any purported waiver or affirmation. In this case, the defendants' conduct in granting overlapping territorial rights to Koperasi Sahabat, contrary to the express terms of cl. 4.3 of the franchise agreement, was not only a serious breach but one that was repeated and sustained over time. The plaintiff had just cause to terminate the agreement under s. 31(3)(d), regardless of any residual or transitional activities undertaken in good faith thereafter.

Issue 4: Whether The Plaintiff Is Entitled To Damages

[52] Upon the court's finding that the defendant is in breach of contract, the plaintiff becomes entitled to compensation under s. 74 of the Contracts Act 1950. This statutory provision embodies the principle that a party who suffers loss as a result of a contractual breach is entitled to be fairly compensated for the damage sustained, and reads as follows:

> Compensation for loss or damage caused by breach of contract
>
> 74. (1) When a contract has been broken, the party who suffers by the breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which

naturally arose in the usual course of things from the breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

(2) Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

[53] Accordingly, having found that the defendants are in breach of contract, the court is of the considered view that the plaintiff is entitled to claim damages pursuant to s. 74 of the Contracts Act 1950. This statutory right to compensation flows directly from the breach and serves to place the plaintiff, as far as money can do so, in the position they would have been in had the contract been duly performed. The damages must, however, be confined to those which naturally arise in the ordinary course of events or were within the contemplation of both parties at the time the contract was made, and not for any remote or indirect losses.

[54] On the issue of aggravated damages, I found no evidence of malicious, high-handed, or oppressive conduct on the part of the defendants that would warrant such an award. The purpose of aggravated damages according to *Lembaga Kemajuan Tanah Persekutuan (Felda) & Anor v. Awang Soh Mamat & Ors* [2009] 5 CLJ 1; [2009] 4 MLJ 610 (per James Foong FCJ) is to punish when the conduct of the wrongdoer discloses malice, cruelty, fraud, and insolence. In *Soo Kian Huat v. Zenith Aim Sdn Bhd* [2016] CLJU 977; [2016] 1 LNS 977; [2016] MLJU 869 Gunalan Muniandy, JC (as His Lordship then was) referred to the case of *Chong Siew Chiang v. Chua Chin Geh & Anor* [1995] 1 CLJ 173; [1995] 1 MLJ 551, wherein Richard Malanjum, J (as His Lordship then was) held as follows:

Before considering any exemplary damages it must be considered first whether the sum in mind for compensatory damages would be adequate. If it is not, in view of the outrageous conduct of the defendant and to indicate disapproval of such conduct and as a deterrence, and additional sum may be added to bring the sum sufficient as punishment.

[55] While the defendants appeared to prefer Koperasi Sahabat, a stronger franchisee with greater commercial presence, this preference seems to have been driven by business or operational pressures asserted by that franchisee. However, such conduct, in and of itself, does not reach the threshold of aggravating behaviour that is insulting, offensive, or calculated to wound the plaintiff's feelings. Although the breach of contract has been established, the circumstances do not justify a finding of aggravation. Accordingly, aggravated damages are not awarded.

[56] Equally I am of the view that exemplary damages are not applicable in this case. Applying the principles established in *Rookes v. Barnard* [1964] 1 All ER 367 (HL), this matter does not fall within the recognised categories for awarding exemplary damages. Specifically, there is no evidence of

A oppressive, arbitrary, or unconstitutional conduct by a government official. Nor is this a case where the defendants' actions were calculated to generate a profit that would likely exceed any compensation payable to the plaintiff. In the absence of such circumstances, the plaintiff's claim for exemplary damages must be disallowed.

B **[57]** I am therefore of the view that general damages would be adequate to compensate the losses suffered due to the defendants' breach of the territorial clause within the franchise agreement. Accordingly, I grant the plaintiff liberty to return to this court for the assessment of such damages.

C **Decision**

[58] Having carefully considered the facts and circumstances of this case, I have allowed the plaintiff's claim as follows:

(i) a declaration that the Ar-Rahn franchise agreement dated 24 March 2014 entered into between the plaintiff, the first defendant, and the second
D defendant has been lawfully terminated as of 3 October 2022;

(ii) that the first and second defendants, jointly and/or severally, pay to the plaintiff general damages which is to be assessed by this court;

(iii) that the first and second defendants, jointly and/or severally, pay to the
E plaintiff interest at the rate of 5% per annum on the amount of damages to be assessed by this court, calculated from the date of judgment until full settlement; and

(iv) that the defendants, jointly and/or severally, pay to the plaintiff costs in the sum of RM25,000.

F

G

H

I